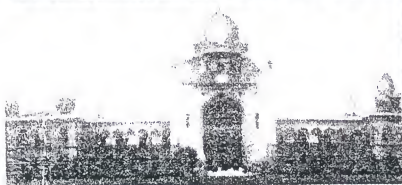


Regd. No. HSE/633/2012-14



HIGH COURT A.P.

Quotable Points

- * Once a construction made without permission was regularized by Municipal Corporation under B.P.S. scheme, it cannot be said to be unauthorized so as to issue any directions for its removal. (10-7-2012) 1
- * Unless a defendant not only pleads but also satisfies the Court that his co-defendant has exhibited 'hostile animus' towards his interests, he is not entitled to cross-examine the latter. (26-6-2012) 9
- * Non-payment of fair rent fixed by Court entails eviction of tenant on the ground of default. (18-6-2012) 111

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- (e) Government gets revenue through registration and stamps.

Based on the information provided and appreciating the Socio-political benefits of amendment of Section 5-A of the RoR, Act, the Government of A.P. may take up this issue and carry out the suggested amendment to clear all anomalies so as to enable resolution of disputes over agricultural land.

JURISDICTION OF DISTRICT FORUMS UNDER CONSUMER PROTECTION ACT : A STUDY IN THE LIGHT OF M/S. NATIONAL SEEDS CORPORATION LTD. CASE*

By

Prof. (Dr.) Mukund Sarda**

1. Farmers who purchase seeds from the National Seeds Corporation Ltd., have the right to make a complaint to the Inspector of Seeds to get the supplier prosecuted and punished and have no remedy to get compensation from the NSC Ltd.¹, for the loss suffered owing to the use of defective seeds. The loss in terms of yield on account of less germination, growth of plants uneven, cost of seeds, cost towards fertilizer and pesticide and value of lost crop, as the expected yield did not result, in view of the seeds sold were defective. In the instant case, the moot question arose as to whether the District forums under Consumer Protection Act, had jurisdiction to entertain the complaints when the issues were governed under the Seeds Act, 1966 and also whether the growers of seeds come under the definition of 'consumer'² under Consumer

Protection Act. In view of the 'arbitration clause' contained in the agreements between the parties, whether the only remedy is under Indian Arbitration and Conciliation act, 1996 to get the dispute settled through arbitration and the remedy under CP Act³ would not be available to the parties.

2. Under Section 13 of C.P. Act, there was failure on the part of purchasers/farmers to get the seeds tested in the Government Laboratory. This was explained that no such scope of testing as the purchasers/farmers used the entire seeds for sowing, as they did not contemplate that they had to meet a situation like moving the consumer Forums for defective seeds supplied by NSC Ltd. Thus, no seeds left for 'testing' as required under Sec.13 of C.P. Act. The Area Managers who inspected the fields reported the fact of less germination and the growth of plants uneven. The Commission appointed by the Consumer Forum reported that the wide variations in all aspects gives a scope that the seeds were not of standard upto the mark. In the context of the reports of experts, the apex court rules that the farmers succeeded in proving that the seeds sold to them were defective resulting in the loss of crops more so, when they had taken proper steps for cultivation but did not get the expected yield due to faulty seeds. The apex court observed that 'non-examination of seeds from the laboratory was not fatal to the case of farmers, whose fields were inspected by the experts' and their opinions substantiated that the seeds were defective.

3. The Supreme Court pointed out that the objects of the Seeds Act⁴ thus: 'in the interest of increased agricultural production in the Country, it is considered necessary to regulate the quality of certain seeds such as seeds of food crops, cotton seeds etc., to be sold for the purpose of agriculture'.

* 2012 (3) SCJ 635.

** Principal & Dean, Bharati Vidya Peet New Law College, Pune.

1. NSC Ltd. refers to the National Seeds Corporation Ltd. throughout this study.

2. For details see Sec.2 (d) of the Consumer Protection Act.

3. C.P. Act refers to Consumer Protection Act, throughout this study.

4. See Sections 19 and 21 of the Seeds Act, 1966.

The Supreme Court further pointed out⁵ that the Seeds Act was totally silent on the issue of payment of compensation for the loss of crops on account of use of defective seeds supplied by the party....'. The court further pointed out that 'a farmer who suffers loss of crop due to defective seeds can approach the Seed Inspector and make a request for the prosecution of the supplier from whom the seeds were purchased. If found guilty, such person can be imprisoned but this cannot redeem the loss suffered by the farmers'.

4. The Supreme Court referred to the Preamble of the CP Act and observed⁶, that C.P. Act is meant to provide for better protection of the interests of consumers and for that purpose to make provisions for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith'. CP Act, 1986 provides additional remedy⁷. The Supreme Court pointed out⁸: "To serve the purpose of the Act, various quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers and to impose

penalties for non-compliance with their orders."

5. The Supreme Court laid down the following norms⁹ in the context of the farmer/growers or other consumer of seeds:—

(i) The Seeds Act is a special legislation to ensure that those engaged in agriculture or horticulture get quality seeds and any person who violates the provisions of the Act/Rules is brought before the law and punished;

(ii) There is no provision in the Seeds Act and the rules framed thereunder for compensating the farmers etc., who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds;

(iii) There is no indication in the Seeds Act that the provisions of the Consumer Protection Act are not available to the farmers who are otherwise covered under the definition of Consumer Protection Act (Sec.2(d))¹⁰;

(iv) Any attempt to exclude farmers from the ambit of CP Act by implication will make the Act vulnerable to an attack of unconstitutionality on the ground of discrimination and there is no reason to interpret the CP Act to exclude them;

(v) If two different forms have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of consumer forum would not be barred

5. Supra Para 17.

6. Ibid

7. See for details Sec.3 of Consumer Protection Act, 1986, See also *Lucknow Development Authority v. M.K. Gupta* AIR 1994 SC 787; *Fair Air Express (P) Ltd. v. M.K. Modi* AIR 1997 SC 533; *Skypay Carriers Ltd. v. Tata Chemicals Ltd.* AIR 2000 SC 2008; *State of Karnataka v. Vishwa Bharat Building Corpn., Society*, AIR 2003 SC 1043; *CCI Chambers Co-op. Housing Society v. Development Credit Bank Ltd.* AIR 2004 SC 184 = 2003 (6) ALT 27.1 (DN SC); *Secretary, Thirumurugan Co-op. Agricultural Credit Society v. M. Lalitha* AIR 2004 SC 448 = 2004 (2) ALT 27.2 (DN SC); *H.N. Shankara Sastry v. Assistant Director of Agriculture, Karnataka* AIR 2004 SC 3474; and *Trans Mediterranean Airways v. Universal Exports and another* 2012 (1) SCJ 417 = (2011) 10 SCC 316.

8. Supra Para 22.

9. Supra Para 23.

10. Section 2 (d) of the Consumer Protection Act originally excluded a person under the definition of 'consumer' who obtains the goods for resale or any commercial purpose. But the Consumer Protection (Amendment) Act, 1993 added an explanation to Sec.2 (d)(1) clarifying the expression 'commercial purpose' that it does not include use by a consumer of goods brought and used by him for the purposes of earning his livelihood by means of self-employment.

and the powers of consumer forum to adjudicate upon the dispute could not be negated¹¹;

(vi) The existence of 'arbitration clause' will not bar a remedy under CP Act, as the Seeds Act could only prosecute and punish the offenders and the farmer will not get anything for the loss suffered. More so, the remedy under the Arbitration Act is not the only remedy available to the farmer, rather it is optional and the additional remedy under CP Act which is available intends to relieve the consumers of the cumbersome arbitration proceedings¹² and it does not extinguish the remedies available under another statute but provides an additional or alternative remedy¹³;

(vii) The burden of proving that the right quality of seeds has been supplied should be on the supplier, and the officers of NSC Ltd., should have used the sample of the seeds supplied to be tested in the laboratory; and

(viii) It is not expected from every buyer of the seeds to set apart some quantity of seeds for testing on the presumption that the seeds would be defective, and that he would be called upon to prove the same through laboratory testing.¹⁴

6. (i) In conclusion, it may be suggested that Seeds Dispute & Settlement) Tribunal be set up to decide all disputes relating to supply of seeds and all matters connected therewith;

(ii) The NSC Ltd., and all suppliers of seeds should keep a sample specimen under lock and seal in the presence of buyers, to be

sent for laboratory testing, whenever it is required;

(iii) The Seeds Act should be amended not only for prosecution and punishment of the offenders who violate the Seeds Act or Rules framed thereafter but should also provide for 'just compensation' to be awarded for the loss suffered on account of supply of defective seeds, to the farmers/growers;

(iv) The Seeds (Disputes & Settlement) Tribunal should be able to award compensation by following the procedure, which is simple and expeditious and to act 'quasi-judicially'. The tribunal should consist of a retired Judge, Seeds Experts and the President/Chairman of the Farmers Association and also a Professor of the Seeds Department of Agricultural University. All decisions of the Tribunal should be made appealable to the High Court; and

(v) The party concerned shall have the option to seek remedy under Arbitration and Conciliation Act, wherever there is a provision for arbitration applicable to the parties or to seek the remedy under the Consumer Protection Act. This could be a part of the agreement between the supplier of seeds and consumers and it must be an implied term in the contract, so that additional remedies could be equally available to the parties.

11. *Kishore Lal v. Chairman, Employees State Insurance Corporation* AIR 2007 SC 1819.

12. See also *Skypay Couriers Ltd. v. Tat Chemicals Ltd.* AIR 2000 SC 2008.

13. *Trans Mediterranean Airways v. Universal Export* 2012 (1) SCJ 417 = 2011 AIR SCW 6028.

14. *Supra* Para 38.